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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/713,593

11/14/2003

Ing. Helmut Brockhaus

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7590

05/12/2006

CESARI AND MCKENNA, LLP
88 BLACK FALCON AVENUE
BOSTON, MA 02210

EXAMINER

STOYNOV, STEFAN

ART UNIT

PAPER NUMBER

2116

DATE MAILED: 05/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/713,593	BROCKHAUS, ING. HELMUT	
	Examiner	Art Unit	
	Stefan Stoynov	2116	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11/14/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

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Priority

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany on 12/03/2002. It is noted, however, that applicant has not filed a certified copy of the DE 102 56 623.2 application as required by 35 U.S.C. 119(b).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 3-5 (when depending on claim 2), 7, and 8-10 (when depending on claim 7) are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2 and 7 contain the phrase "and/or" in lines 1 and 2. As such the scope of claims 2 and 7 is not clear.

The rejection for claims 3-5 and 8-10 (when depending on claims 2 and 7 respectively) is based on the same ground of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Houvig, EP Num. 101528.

Re claims 1 and 6, Houvig discloses an electric device and a method for operating an electric device with two-wire interface (column 1, lines 3-6), said two-wire interface serving to deliver electric power to the electric device and to transmit a signal (column 1, lines 36-52, column 2, lines 10-11, FIG. 1, 17, 8, 4), with the maximum power consumption of the electric device during normal operation being restricted to a predefined limit (column 2, lines 7-13, line 64 – column 2, line 1, lines 43-46), wherein the permissible power consumption of the electric device is automatically and temporarily increased beyond said predefined upper limit when the electric device is switched into a special operational mode (column 2, lines 16-19, lines 43-51, FIG. 4A).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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Claims 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Houvig, EP Num. 101528 in view of Information Disclosure Statement (IDS), filed 11/14/2003, Applicant's statement regarding German Patent Num. DE 29917651.

Re claims 2 and 7, Houvig discloses all claim limitations of claims 1 and 6.

Houvig fails to disclose wherein a software update and/or a calibration process and/or a diagnostic function and/or a maintenance function is/are considered to constitute a special operational function.

Applicant's statement with regards to German Patent Num. DE 29917651 teaches diagnostics means to check the performance of a transducer coupled to a two-wire line. (IDS, page 1). In addition, the same statement further teaches if performance is good, operating within the normal operating range (IDS, bottom line on page 1), and if maintenance is required, increasing the current consumption above the normal range of 4-20 mA (IDS, page 1 – page 2). Therefore, only during maintenance (temporarily) the current is increased, thus keeping the predetermined power consumption within the limits during normal operation.

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to use the two-wire line apparatus and the method for temporarily increasing the current during maintenance, as suggested by Applicant's statement regarding German Patent Num. DE 29917651 with the electric device and a method for operating an electric device with two-wire interface disclosed by Houvig in order to implement wherein a software update and/or a calibration process and/or a diagnostic function and/or a maintenance function is/are considered to constitute a special operational function. One of ordinary skill in the art would be motivated to do so in order

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to maintain the predetermined power consumption during normal operation of the electric device.

Allowable Subject Matter

Claims 3-5 and 8-10 (when depending on claims 2 and 7 respectively) would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 3-5 and 8-50 (when depending on claims 1 and 6 respectively) are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Re claims 3 and 8, the prior art fails to disclose or suggest, individually or in combination the subject matter of claims 1 and 6, wherein "the maximum permissible rate is increased to 22 mA".

Re claims 3 and 8, the prior art fails to disclose or suggest, individually or in combination the subject matter of claims 2 and 7, wherein "the maximum permissible power consumption is increased to 22 mA".

Re claims 4 and 9, the prior art fails to disclose or suggest, individually or in combination the subject matter of claims 1 and 6, wherein "the maximum permissible power consumption is raised to a value that corresponds to the FDE value of the measuring device".

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Re claims 4 and 9, the prior art fails to disclose or suggest, individually or in combination the subject matter of claims 2 and 7, wherein "the maximum permissible power consumption is raised to a value that corresponds to the FDE value of the measuring device".

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefan Stoyanov whose telephone number is (571) 272-4236. The examiner can normally be reached on 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne can be reached on (571) 272-3670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SS

A handwritten signature in black ink, appearing to read 'Thuan N. Du', with a long, sweeping horizontal line extending to the left.

THUAN N. DU
PRIMARY EXAMINER